

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 92-253

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FILE

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FCC - MAIL ROOM

In re Applications of

BAKCOR BROADCASTING, INC., Debtor
c/o DENNIS ELAM, TRUSTEE

File No. BRH-900330VV

For Renewal of License of
Station KLIK(FM), Lubbock, Texas

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

File No. BPED-900629MK

For Construction Permit for a new FM
Station on Channel 229C1, Lubbock, TX

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To: Administrative Law Judge Walter C. Miller

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR LEAVE TO AMEND

Southwest Educational Media Foundation of Texas, Inc., by its counsel, hereby petitions for leave to amend its application in the above-captioned proceeding. In support whereof the following is stated:

1. The attached amendment reports the resignation of T. Kent Atkins as an officer and director of SEMFOT. The amendment also provides a revised Section II to the application, reflecting the proposed change in the applicant, substituting Lubbock Educational Broadcasting, Inc. ("LEBI") as the new applicant (see Petition for Leave to Amend filed November 11, 1992).

2. The amendment is required by Section 1.65 of the Commission's Rules so as to accurately reflect the status of the applicant. The applicant does not seek nor will it obtain any comparative advantage from the information provided by the amendment.

3. In addition, the amendment meets the normal "good cause" criterion developed by case law which include the following:

- 1) The applicant acted with due diligence in filing the petition to amend;
- 2) acceptance of the proposed amendment will not necessitate a change in issues, or the addition of new issues or parties;
- 3) the proposed amendment is not required as a result of a voluntary act of the applicant;
- 4) other parties will not be unfairly prejudiced by the acceptance of the amendment; and
- 5) the proposed applicant will not gain a comparative advantage through acceptance of the proposed amendment.

See Sands Broadcasting Corp., 22 R.R. 106, 110 (H.E. 1961). Accord, Radio Ridgefield, Inc., 47 F.C.C. 2d 402 (Rev. Bd. 1974), Click Broadcasting Co., 25 F.C.C. 2d 511 (Rev. Bd. 1970), Erwin O'Connor Broadcasting Co., 22 F.C.C. 2d 140 (Rev. Bd. 1970), Ultravision Broadcasting Co., 11 F.C.C. 2d 394 (Rev. Bd. 1968).

4. The applicant has acted with due diligence in submitting the amendment within 30 days following release of the Hearing Designation Order. The resignation of Mr. Atkins is being reported within five days of the tender of his resignation from SEMFOT. The Section II information is being filed within five days of receipt of the Mass Media Bureau's pleading opposing the substitution of the corporate applicant solely on the grounds that the Section II information was not provided.

5. Acceptance of the amendment will not necessitate the

modification or addition of issues or parties. The portion of the amendment reporting the resignation of Mr. Atkins may in fact eliminate issues since, as reported in F.N. 1 of the HDO, various allegations have been made regarding Mr. Atkins' qualifications to be a Commission licensee. Although Elam argued in its OPPOSITION TO PETITION FOR LEAVE TO AMEND, filed November 20, 1992, that Atkins' qualifications remain at issue even if he removes himself from the application, his removal certainly would not require additional issues. No reason is known as to why the addition of Mr. Workman as a party to the application would require a modification of issues. He was formerly President and 100% owner of KRLB, Inc., licensee of KRLB AM/FM, Lubbock, TX. (AM from 1975 - 1982; FM from 1977 - 1982). There were never any adverse findings regarding his character in operating those stations.

6. The proposed amendment is not required as a result of a voluntary act of the applicant. The resignation of Mr. Atkins is not a voluntary act of the applicant. It is a voluntary act of Mr. Atkins. However, the applicant here is a corporation, consisting of 3 persons. They have no control over the resignation of Mr. Atkins other than to report it.

7. The other parties will not be prejudiced by the acceptance of the amendment. In his OPPOSITION TO PETITION FOR LEAVE TO AMEND, filed November 20, 1992, opposing the portion of the amendment which seeks to substitute applicants, Elam argues that it would be prejudiced because the proposed amendment would disrupt the proceeding because Elam would not know "which entity is the real applicant and which persons are the real principals."

This is not a real concern because it is expected that the Presiding Judge will act on the amendment well before discovery is required to be completed in this hearing. In any event, this argument is unavailing regarding the portion of the amendment which reports the resignation of Mr. Atkins. There would be no additional parties as a result of that portion of the amendment and thus no additional burden on Elam whatsoever.

8. The applicant does not seek nor will it obtain any comparative advantage from the information provided by the amendment. While Elam argues that the elimination of Mr. Atkins would result in a comparative advantage to SEMFOT, such is certainly not the case. Indeed, SEMFOT hereby stipulates that it will not seek any comparative advantage as a result of the removal of Mr. Atkins. To the extent that Elam intends to argue (para. 5 of its opposition) that SEMFOT may have past broadcast record which bears adversely on its comparative qualifications, the removal of Atkins will in no way diminish the record on that score and SEMFOT hereby so stipulates that it will not seek to avoid scrutiny of its broadcast record as a result of the resignation of Mr. Atkins.

9. Elam also argues (para. 6-7) that "SEMFOT cannot be permitted to amend out of its problems," referencing Mr. Atkins' character qualifications. Assuming *arguendo* that Elam is correct on this point, that has no bearing on acceptance of the instant amendment. That argument goes to questions which presumably must be raised in a motion to enlarge issues. There is no character issue before the Presiding Judge at this time and no such issue has ever been designated against SEMFOT or Atkins. The mere fact

that allegations have been made in regard to Mr. Atkins is no basis for denying him the privilege of withdrawing from SEMFOT.

10. Finally, it is noted that Elam contends (para. 1 of opposition pleading) that Atkins is the "moving force behind the application" and thus should not be permitted to resign. While Mr. Atkins may have been the instrument who was initially responsible for the filing of this noncommercial application, he ceased to be the "moving force behind the application" when over 1,000 citizens of Lubbock marched to the KAMY studios and donated some \$75,000.00 toward the purchase of this facility from the bankrupt estate. Recognizing his fiduciary duty to those citizens of Lubbock who have paid their hard-earned money to have this radio station serve them, Mr. Atkins, on advice of undersigned counsel (who is serving *pro bono* in this matter on behalf of the citizens of Lubbock), has agreed to step down as a principal of this application. When Mr. Elam entered into a contract with a non-profit corporation to sell this station to that corporation and when that corporation raised public money based on the contract with Elam, this application became an application of the citizens of Lubbock of which the principals are merely "trustees" in the purest sense of that term.

11. Whether or not the citizens of Lubbock must suffer due to the alleged wrongdoing of Atkins is a matter which the Presiding Judge may ultimately have to decide in this proceeding. However, undersigned would respectfully contend that the "public interest" here is clearly in favor of the citizens of Lubbock who have donated their funds to see this radio station serve them and acceptance of the proffered amendment would serve the public

interest.

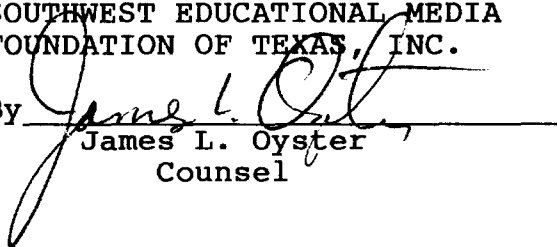
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the attached amendment be accepted for filing.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

By


James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing PETITION FOR LEAVE TO AMEND by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 27th day of November, 1992, to the following:

The Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
2000 L St., N.W., Room 213
Washington, D.C. 20554

Paulette Laden, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Linda J. Eckard, Esq.
Roberts & Eckard
1919 Pennsylvania Ave., N.W., Suite 222
Washington, D.C. 20006
Counsel for Dennis Elam

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 350
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AMENDMENT

The application of Southwest Educational Media Foundation of Texas, Inc (SEMFOT) for a construction permit for a new FM broadcast station at Lubbock, TX (BPED-900629MK) is hereby amended to report the resignation of T. Kent Atkins as an officer and director of the corporation, effective January 1, 1993. No other change in the officers and directors of the corporation is anticipated. The application is also amended in accordance with the attached material relating to Lubbock Educational Broadcasting, Inc.

Respectfully submitted,

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

Date:

Nov. 23, 1992

T. Kent Atkins
T. Kent Atkins

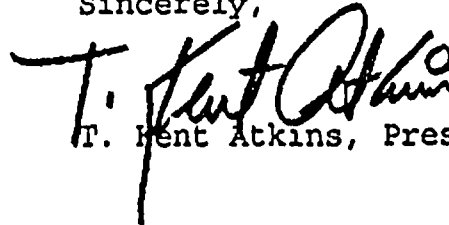
T. Kent Atkins
2921 Brown Trail
Suite 140
Bedford, TX 76021
(817) 498-7001

November 23, 1992

To: The Board of Directors of
Southwest Educational Media
Foundation of Texas, Inc.

I hereby tender my resignation as an officer and director of
Southwest Educational Media foundation of Texas, Inc., effective
January 1, 1993.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Kent Atkins", with a stylized flourish at the end.

T. Kent Atkins, President

SECTION II INFORMATION
LUBBOCK EDUCATIONAL BROADCASTING, INC.

On November 11, 1992, Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") tendered an amendment proposing to substitute a new corporation, Lubbock Educational Broadcasting, Inc. for SEMFOT. That amendment is incorporated herein by reference.

Attached hereto is an amended Section II of FCC Form 340, reflecting the new corporation. The only change in principals is the replacement of T. Kent Atkins by Don Workman.

Section II - LEGAL QUALIFICATIONS

Name of Applicant

Lubbock Educational Broadcasting, Inc.

1. Applicant is: *(Check one box below)*

- ☐ (a) governmental or public educational agency, board or institution
- ☐ (b) private nonprofit educational institution
- ☒ (c) Other *(specify)*

2. For applicants 1(c) only, describe in an Exhibit the nature and educational purposes of the applicant.

Exhibit No.
1

3. For applicants 1(c) applying for a new noncommercial educational television station only, describe in an Exhibit how the applicant's officers, directors and members of its governing board are broadly representative of the educational, cultural and civic segments of the principal community to be served.

Exhibit No.
N/A

4. Describe in an Exhibit how the proposed station will be used, in accordance with 47 C.F.R. Section 73.503 or Section 73.621, for the advancement of an educational program.

Exhibit No.
1

5. Is there any provision contained in any by-laws, articles of incorporation, partnership agreement, charter, statute or other document which would restrict the applicant in advancing an educational program or complying with any Commission rule, policy or provision of the Communications Act of 1934, as amended?

☐ Yes ☒ No

If Yes, provide particulars in an Exhibit.

Exhibit No.
N/A

CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

6. (a) Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (See Instruction B to Section II.)

☐ Yes ☒ No

(b) Will any funds, credits or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☒ No

If the answer to (b) above is Yes, attach an Exhibit giving full disclosure concerning this assistance.

Exhibit No.
N/A

7. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☒ No

If the answer to (a) and/or (b) above is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c) in the case of adjudicated proceedings, the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) a description of the current status or disposition of the previously reported matter.

Exhibit No.
N/A

PARTIES TO APPLICATION

8. Complete the following Table with respect to all parties to this application:

(NOTE: If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification.)

INSTRUCTIONS: If applicant is a corporation or an unincorporated association with 50 or fewer stockholders, stock subscribers, holders of membership certificates or other ownership interests, fill out all columns, giving the information requested as to all officers, directors and members of governing board. In addition, give the information as to all persons or entities who are the beneficial or record owners of or have the right to vote capital stock, membership or ownership interests or are subscribers to such interests. If the applicant has more than 50 stockholders, stock subscribers or holders of membership certificates or other ownership interests, furnish the information as to officers, directors, members of governing board, and all persons or entities who are the beneficial or record owners of or have the right to vote 1% or more of the capital stock, membership or ownership interests. If applicant is a governmental or public educational agency, board or institution, fill out columns (a), (b), and (c) as to all members of the governing board and chief executive officers.

Name and Residence Address(es) (a)	Office Held (b)	Director or Member of Governing Board		% of: Ownership (O) or Voting Stock (VS) or Membership (M) (d)
		YES	NO	
		(c)		
Don Workman 5213 70th St. Lubbock, TX <				

Section II - LEGAL QUALIFICATIONS (Page 3)

9. Does the applicant, or any party to the application, have a petition to migrate to the expanded band (1605-1705 kHz) or a permit or license either in the existing band or expanded band that is held in combination with the AM facility proposed to be modified herein?

☐ Yes ☒ No

If Yes, provide particulars as an Exhibit.

Exhibit No.

10. Does the applicant or any party to this application have, or have they had, any interest in: See Exhibit 2

- (a) a broadcast station, or pending broadcast station application before the Commission?
- (b) a broadcast application which has been dismissed with prejudice by the Commission?
- (c) a broadcast application which has been denied by the Commission?
- (d) a broadcast station, the license of which has been revoked?
- (e) a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the applicant?

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

If the answer to any of the questions in (a)-(e) above is Yes, state in an Exhibit the following information:

Exhibit No.
2

- (1) Name of party having interest;
- (2) Nature of interest or connection, giving dates;
- (3) Call letters of stations or file number of application or docket; and
- (4) Location.

EXHIBIT 1

The applicant is a non-stock non-profit corporation incorporated in the State of Texas on November 10, 1992. The corporation is authorized to construct, own or operate one or more noncommercial educational broadcast stations to be operated on a noncommercial educational basis consistent with the definition of "public telecommunications services" set out in section 397(14) of the Communications Act of 1934, as amended.

The new corporation is adopting the educational purposes and programming policies as set forth in the application of Southwest Educational Media Foundation of Texas, Inc. (See Section II and Exhibit L-1 and P-1).

EXHIBIT 2

The only change in the principals of the applicant, as restructured under the new corporation, is the addition of Mr. Don Workman as a principal to replace T. Kent Atkins. Mr. Workman has no other media interests or applications pending before the FCC. He has no FCC applications which were dismissed or denied. Mr. Workman was President and sole stockholder of KRLB, Inc., licensee of KRLB AM/FM, Lubbock, TX. The AM was owned from approximately 1975 - 1982; the FM from 1977 - 1982. No character issues were ever specified against Mr. Workman by the FCC. Mr. Workman is not related to any other principal of the applicant.

Mr. deLap's address has changed. The new address is 410 Westbrook, Pinehurst, TX 77362.